



# LAKE COUNTY

FLORIDA

COUNTY ATTORNEY'S OFFICE

SANFORD A. MINKOFF\*

*County Attorney*

*sminkoff@lakecountyfl.gov*

MELANIE N. MARSH\*

*Deputy County Attorney*

*mmarsh@lakecountyfl.gov*

ERIN HARTIGAN

*Assistant County Attorney*

*ehartigan@lakecountyfl.gov*

*\*Board Certification in City, County and Local Government Law*

## MEMORANDUM

TO: Capital Facilities Advisory Committee (CFAC)  
FROM: Melanie Marsh, Deputy County Attorney *mm*  
DATE: September 29, 2014  
RE: School Improvement Funding

On September 16, 2014, the CFAC held a special meeting to review and make a recommendation on the Lake County School Board's request to increase the educational impact fee rate currently levied by the County. Several funding issues were raised, and this memorandum is in response to those questions.

### Issues Presented

1. Can the County create a Municipal Services Taxing Unit (MSTU) or Benefit Unit (MSBU) to fund school improvements?
2. Can Educational Impact Fees be placed upon the property owner's tax bill in lieu of being paid at the time of issuance of the building permit, or issuance of the Certificate of Occupancy?

### Answer

No, the County cannot create an MSTU/MSBU for the purpose of collecting money to be used for school improvements, nor can the currently assessed educational impact fee be placed on a property owner's tax bill.

### Discussion

#### A. Use of MSTU/MSBUs for School Improvements

Article VII, section 9(b), Florida Constitution, establishes the basis for local governments to levy ad valorem taxes. The Constitution authorizes a county to levy taxes in an amount not to exceed ten (10) mills for county purposes, but also allows an additional ten (10) mills to be levied

P.O. BOX 7800 ♦ 315 W. MAIN ST. ♦ SUITE 335 ♦ TAVARES, FL 32778-7800 ♦ P 352.343.9787 ♦ F 352.343.9646

*Board of County Commissioners ♦ [www.lakecountyfl.gov](http://www.lakecountyfl.gov)*

for municipal services provided in the unincorporated areas. The Florida Legislature codified the counties' ability to levy the additional ten (10) mills in Section 125.01(1)(q), Florida Statutes. MSTU/MSBUs can statutorily be used to provide services that include fire protection, law enforcement, streets, health care services, and other essential facilities and municipal services within the unincorporated areas. MSTU/MSBUs do not constitute special districts. Rather, they are:

[A] tax equity tool available to a board of county commissioners to place the burden of ad valorem taxes upon a geographic area less than countywide to fund a particular service. In terms of functionality and accountability, it is no different than any other revenue source appropriated and budgeted by a county... The distinction between a municipal services taxing unit and municipal services benefit unit is that the "benefit unit" is the correct term when the mechanism used to fund the county service is a service charge or a special assessment rather than a tax.

Nabors, Giblin & Nickerson, P.A., Primer on Home Rule & Local Government Revenue Sources, §4.02 (2013).

Since an MSTU/MSBU is a taxing method, the same constitutional limitations apply to the use of the collected money as would apply to the collection of general ad valorem taxes. In 1938, the Florida Supreme Court clearly stated that taxation for the support of free public schools is distinct from taxation for county purposes. Hamrick v. Special Tax District No. 1 of Jefferson County, 130 Fla. 453, 460 (1938). The Court further clarified that a local government cannot levy a tax for public free school purposes as the school district is a governmental entity with its taxing authority. Id., at 460.

Later, in 1977, the Florida Attorney General opined that noncharter counties are not authorized by general law to lend county funds derived from ad valorem tax revenue or from other sources to district school boards. Fla. Op. Atty. Gen. 077-38. This opinion went on to analyze the intent of the Florida Constitution as it relates to taxation, and reiterated that noncharter counties have no constitutional powers of their own. Based on constitutional principles, the Attorney General stated that in order for a noncharter county to lend county funds to a district school board, such power must be granted to the county by the Florida Legislature. To date, no such grant of power has been enacted.

In a more recent Attorney General's Opinion, Bradford County asked whether the county could establish an MSTU for purposes of providing and maintaining the county jail. The Attorney General responded in the negative basing his opinion on the fact that the provision of a county jail is a county responsibility and the burden of funding such service could not be placed on those residing in the unincorporated areas alone. Fla. Op. Atty. Gen. 91-25. This opinion also

stated that a special district encompassing both the unincorporated and municipal areas would not appear to be authorized, again, basing the opinion on the grounds that provision of the jail is solely a county function. Id.

AGO 91-25 is analogous to the school system. The provision of a free public school system is solely within the purview of the district school boards. Therefore, the use of an MSTU/MSBU would not be authorized as the burden of funding the school system cannot be placed on those living in the unincorporated areas alone. A special district would also not be authorized, as again, the school district is solely responsible for the provision of a free public school system, and pursuant to the Florida Constitution, has its own ability to levy taxes for school purposes.

Based on the foregoing legal precedent, it is the opinion of the County Attorney's Office that the Board of County Commissioners cannot impose a MSTU/MSBU for purposes of funding school improvements. The Florida Supreme Court has clearly stated that taxation for free public schools is distinct from taxation for county purposes, and that local governments simply cannot levy a tax for the purposes of funding the school system.

B. Placement of Impact Fees on the Property Owner's Tax Bill.

Impact fees are charges imposed against new development to provide for the cost of capital facilities made necessary by growth. In 2006, the Legislature adopted the Florida Impact Fee Act, which is codified in Section 163.31801, Florida Statutes. In order to be a valid impact fee, there must be a reasonable connection, or rational nexus, between the need for the additional capital facilities and the growth in population. Once this nexus is established, the local government must establish a nexus between the expenditure of the proceeds and the benefits accruing from those proceeds. Nabors, Giblin & Nickerson, P.A., Primer on Home Rule & Local Government Revenue Sources, §5.04 (2013).

The County has currently established an Educational Impact Fee in the following amounts: (1) \$2,573.10 for single family homes; (2) \$1,545.25 for multi-family units; and (3) \$845.50 for mobile homes. These fees are collected at the time the building permit is issued, or may be deferred upon request until the issuance of the Certificate of Occupancy. The fees are not currently collected on the tax bill.

In order for an impact fee to be collected on the tax bill under Section 197.3632, Florida Statutes, relating to the Collection of Non-Ad Valorem Assessments, the impact fees would have to be levied, and qualify, as a special assessment under prevailing Florida law. Valid special assessments satisfy a two prong test. First, the property assessed must derive a special benefit from the improvement or service provided; and second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. In other words, the jurisdiction imposing the assessment must be able to show that "there is a logical relationship

between the services provided and the benefit to the real property.” Whisnant v. Stringfellow, 50 So.2d 885 (Fla. 1951). Services that have been upheld as valid special assessments include garbage disposal, sewer improvements, road improvements, fire services, and stormwater management. Services that have been determined to be ineligible include provision of hospitals, emergency medical services and law enforcement services. Nabors, Giblin & Nickerson, P.A., Primer on Home Rule & Local Government Revenue Sources, §5.05 (2013).

Although there does not appear to be any case law on the subject, there does not appear to be a logical relationship between the provision of a free public school system and the benefit to real property. The provision of school services would seem more akin to the provision of a hospital or emergency medical service in that the service itself benefits the individual rather than the property. In absence of any legal support otherwise, impact fees cannot be collected under the Uniform Method for the Collection of Non-Ad Valorem Assessments, established under Section 197.3632, Florida Statutes.

cc: Amye King, Director, Growth Management